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of the environmental contributions toward deviant behavior. It is entirely possible that we can, in the words of Montagu, "do a great deal to change certain environmental conditions that may encourage XYY individual to commit criminal acts."⁵⁴

CONCLUSION

It is unlikely that the XYY Syndrome will win acceptance as a criminal defense in the near future. The judicial revolution which some observers expected to follow the discovery of the XYY male, is not at hand. At best, there has been a quiet acceptance in the scientific community of a correlation between presence of the defect, and anti-social behavior.

Many years of study may lie ahead before the exact relationship between genetic abnormalities and behavior is uncovered. The birth to death studies which some experts consider crucial could delay any real understanding of the syndrome's behavioral manifestations for generations. And, the large scale population tests which are necessary to determine the true incidence of the XYY are extremely costly.

However, it does seem clear at this point, that XYY individuals experience unusual difficulty in conforming their conduct to societal norms. At some point the courts will be obligated to take notice of this fact.

PAUL CHEVERIE

Agency and Licensing Problems In Reforming Group Credit Insurance Contracts

When a consumer purchases merchandise under a retail installment contract or executes a promissory note for money loaned, he is usually urged and sometimes required to purchase group credit insurance as part of the transaction. Because the writer of the policy retains a percentage of the premium as payment for placing the policy with the insurance company, salesmen and credit institutions often push the policy upon the buyer. Credit institutions sometimes require credit insurance coverage where the debtor is considered a poor credit risk. For example, a bank would require credit life insurance on an elderly person who borrows money in order to be assured of repayment if the debtor dies before the note is fully paid.

54. Montagu, *supra* note 1, at 49.

In a typical transaction, the buyer is confronted by an automobile salesman or loan officer, who does not hold an insurance license nor possess any specialized insurance skills, discussing the merits of an insurance purchase. The consumer normally does not see the policy before agreeing to buy the insurance and the provisions of the policy are not adequately or accurately explained. It is especially true with salesmen that the primary motive behind the insurance sales talk is the potential profit to be made and not the consumer's protection or education. There is never a choice of insurance companies available to the buyer as he does not even know the name of the insurer until a copy of the master policy arrives in the mail long after the purchase. It is easy to see how the buyer often comes away from a credit insurance transaction believing that his insurance covers much more than the policy provides. Variances between the oral sales representations and the master policy provisions are discoverable after the buyer receives his copy. However, people seldom read their insurance policies.

If the group credit insurance contract does not conform to the oral representations of the salesman or credit institution, rescission, reformation, and damages are the three remedies available to the buyer. The expedient remedy is to cancel the credit insurance contract. Under § 25A-36 of the North Carolina General Statutes, the creditor is required to refund the insurance premiums. Cancellation of the contract is a viable remedy if the insured has not suffered any damages due to reliance upon false oral representations. An action on the contract is the appropriate remedy if the buyer has relied on misrepresentations as to coverage which resulted in his financial loss.

This paper concerns itself with agency and licensing problems which prevent the reformation of group credit insurance contracts. It does not explore any damage action remedies. Due to the governing case law and statutory law, the consumer is at the mercy of salesmen and creditors who may use sharp practices to coerce the purchase of group credit insurance policies. In order to maintain an action for reformation of the group insurance policy, the salesman or creditor must be the agent of the insurance company. When an agency relationship exists, there is privity of contract between the insurer and the insured. An action upon a personal insurance contract can easily be maintained because there is privity of contract between the buyer and the insurance company. The personal insurance agent is required to be licensed and an agency relationship exists between the insurance company and the agent salesman. Such a relationship does not exist in group credit insurance, and the lack of licensing requirement is the heart of the problem.

LICENSING REQUIREMENTS

Every insurance company which is authorized to do business in the State of North Carolina must license their agents.¹ To obtain a license, the agent must pass a written examination given by the insurance commissioner at such places and at such intervals "as he deems necessary reasonably to serve the convenience of both the commissioner and the applicants."² The scope and depth of the examination, and the passing standard are left to the discretion of the commissioner.³ With such broad powers, the insurance commissioner has total discretion to determine the number of licensed insurance agents in the state and the quality of those agents. However, the licensing power of the insurance commissioner has not been extended over credit life insurance agents, credit accident and health insurance agents, and credit property insurance agents. These agents have been specifically excluded from the licensing requirements by the North Carolina Legislature.⁴ People who are credit life, accident and health, and property insurance agents are not employees of insurance companies, but are in fact the local banker, car salesman, and major appliance dealer.⁵

The North Carolina General Statutes state:

Nothing contained in article 3 of Chapter 58 shall be construed as prohibiting the purchase of insurance by, or requiring the licensing of, a person who arranges the purchase of insurance to cover property in which he or his employer has an interest, provided such insurance is issued through an agent duly licensed under this article.⁶

This provision authorizes the purchase of credit life, accident and health, or property group policies by banking institutions, small loan offices, automobile dealerships, major appliance dealerships or any other person or institution which has an insurable interest in property sold to a consumer. An insurable interest, in practical terms, is a security interest.⁷ The provision also exempts any employee of an institution, which has purchased a group credit insurance policy and who arranges the consumer's purchase of said insurance, from any licensing requirement.

Due to the fact that a credit life, accident and health, or property insurance agent does not have to obtain a license, he is not subject to the statutory penalties for willful misrepresentation of insurance poli-

1. N.C. GEN. STAT. § 58-40 (1972).

2. N.C. GEN. STAT. § 58-41.1(d) (1969).

3. N.C. GEN. STAT. § 58-41.1(a)(c) (1971).

4. N.C. GEN. STAT. § 58-41.1(a)(6) (1971).

5. N.C. GEN. STAT. § 58-39.4(f)(j) (1971).

6. N.C. GEN. STAT. § 58-40.5 (1953).

7. *Rea v. Hardware Mutual Casualty Co.*, 15 N.C. App. 620, 190 S.E.2d 708 (1972).

cies, or deception as to the nature of the insurance contract itself.⁸ For any of the above violations, the penalties are civil in nature, and authorize the insurance commissioner to revoke or suspend the agent's license and inflict a maximum penalty of \$25,000.00.⁹ It is clear that the insurance commissioner lacks the statutory authority to police any abuses that the consumer suffers at the hands of those who arrange the purchase of group credit insurance policies.

REFORMATION OF THE INSURANCE CONTRACT BY THE COURTS

If the consumer is to obtain relief from sales abuses, his hope would lie in the state courts of North Carolina. The remedy for willful misrepresentation of the insurance policy and deception as to the nature of the insurance contract is the reformation of the contract to meet the reasonable expectations of the consumer. North Carolina courts have long held that insurance policies, like all written instruments, may be reformed in equity by parol evidence.¹⁰

Wex S. Malone surveyed the law regarding the reformation of contracts in his article published in the North Carolina Law Review.¹¹ After an analysis of North Carolina case law, Malone found that the leading principles for reformation of a contract can be broadly stated as follows:¹²

- 1) Reformation will not be granted except on clear and convincing evidence.
- 2) Reformation will be granted only when the mistake is mutual.
- 3) Reformation will not be granted for a mistake of law standing alone.
- 4) Reformation will not be granted for a mistake attributable to the negligence of the complainant.
- 5) Reformation will not be granted when the complainant had a fair opportunity to read the instrument before signing or accepting it.

By itself, mistake of law is inadequate for reformation of the insurance contract, but where such a mistake has been accompanied by inequitable conduct, reformation will be granted.¹³ Knowledge of the intent of the parties is essential in ascertaining whether mutual mistake

8. N.C. GEN. STAT. § 58-42 (1913).

9. N.C. GEN. STAT. § 58-44.6 (1955).

10. *Britton v. Metropolitan Life Insurance Co.*, 165 N.C. 149, 80 S.E. 1072 (1914); *Sykes v. Life Insurance Co. of Va.*, 148 N.C. 13, 61 S.E. 610 (1908); *Williams v. Greensboro Fire Insurance Co.*, 209 N.C. 765, 185 S.E. 21 (1936).

11. *The Reformation of writings under the Law of North Carolina*, 15 N.C.L. Rev. 155 (1936).

12. *Id.* at 157.

13. *M.P. Hubbard & Co. v. Horne*, 203 N.C. 205, 165 S.E. 347 (1932).

or inequitable conduct has occurred,¹⁴ and if reformation is to be granted, the misrepresentation must be a material one.¹⁵

The courts of North Carolina recognized that mutual mistake is not always essential to the reformation of a contract, but the mistake of one party induced by the fraud of the other party is a good ground for reformation of an insurance policy.¹⁶ Insurance companies are liable for misrepresentations of their agents as to policy provisions, especially when such representations are made with the intention to induce acceptance of the policy.¹⁷ The insured is entitled to rely upon the apparent authority of the agent and the insurance company will be liable for misrepresentations unless the limitations of the agent's authority are brought to the attention of the insured.¹⁸

If the disagreement between the parties concerns the interpretation of the written contract, the provision must be construed against the insurer as the draftsman of the document.¹⁹

In North Carolina, an oral contract for insurance will be upheld.²⁰ However, once the contract is reduced to writing, all prior parol agreements are merged into the instrument. When offered by the insurer and accepted by the insured, the policy must be conclusively presumed to contain all the terms by which the parties intended to be bound.²¹ Where a party alleges mutual mistake or fraud, parol evidence is admissible to show the real agreement between the parties.²² Either the principal or the agent may be estopped by his representations or conduct from repudiating the transaction between the parties.²³ Knowledge of the agent will be imputed to the insurer even if a direct stipulation to the contrary appears in the policy or application.²⁴

The chief obstacle in reforming insurance contracts has been the fifth reformation provision as set out in Malone's article. In the past, North Carolina courts have refused reformation of insurance policies to meet

14. *Maxwell v. Wayne National Bank*, 175 N.C. 180, 95 S.E. 147 (1918).

15. *Clements v. Life Ins. Co. of Virginia*, 155 N.C. 57, 70 S.E. 1076 (1911).

16. *Austin v. Life Insurance Co. of Va.*, 148 N.C. 24, 61 S.E. 614 (1908); *Sykes v. Life Insurance Co. of Va.*, 148 N.C. 13, 61 S.E. 610.

17. *Briggs v. Life Insurance Co. of Va.*, 155 N.C. 73, 70 S.E. 1068 (1911).

18. *Charleston & W.C. Ry. Co. v. Robert Lassiter & Co.*, 207 N.C. 408, 177 S.E. 9 (1934).

19. *Dildy v. S.E. Fire Insurance Co.*, 13 N.C. App. 66, 185 S.E.2d 272 (1971).

20. *Mayo v. American Fire & Casualty Co.*, 282 N.C. 346, 192 S.E.2d 828 (1972).

21. *Ocean Accident and Guarantee Corp. v. Piedmont Ry. & Electric Co.*, 179 N.C. 402, 102 S.E. 636 (1920); *Moore v. Fidelity and Casualty Co. of N.Y.*, 207 N.C. 433, 177 S.E. 406 (1934).

22. *Word v. Ledbetter*, 21 N.C. (1 Dev & B. Eq) 496 (1837); *American Potato Co. v. Jenette Bros.*, 172 N.C. 1, 89 S.E. 791 (1916).

23. *Boney v. Central Mutual Insurance Co. of Chicago*, 213 N.C. 563, 197 S.E. 122 (1938).

24. *National Life Insurance Co. v. Grady*, 185 N.C. 348, 117 S.E. 289 (1923).

GROUP CREDIT INSURANCE

the reasonable expectations of the insured because the purchaser had not read the policy promptly after receipt and brought any variances between the oral representations and the written terms to the attention of the insurer.²⁵ Each case must be determined on its own merits, but the following two cases seem to take notice of the fact that few people ever read their insurance contracts.

In *McCallum v. Insurance Company*,²⁶ an eighty year old woman borrowed money from a bank which required her to purchase credit life insurance. The woman did purchase the insurance, but the wrong effective date and expiration date were typed on the policy which resulted in the repayment schedule not being covered by the insurance. After the woman died, her executor brought an action for reformation of the contract to have the policy cover the repayment schedule. The contract was reformed by the court despite the "opportunity to read the instrument rule" because of the mutual mistake of the parties and the woman's old age. The court stated:

We have held in *Bank of Union v. Redwine*, 171 N.C. 559, 88 S.E. 878, and in *Finishing and Warehouse Company v. Ozment*, supra, [132 N.C. 839, 44 S.E. 681] that a person's failure to read an instrument before signing it does not necessarily or always prevent reformation.²⁷

In the second case, *Gaston-Lincoln Transit v. Maryland Casualty Company*,²⁸ a bus company always dealt with the same insurance agent and had its insurance policy renewed with that company each year. Each previous insurance contract had not limited coverage to a specific radius around the garage. After instructions from the insurer, the policy upon which the action was predicated was limited in coverage to a certain radius around the central company operation. The bus company was not aware of this provision until it filed a claim for damages sustained by a bus outside the radius of coverage. The bus company sued for reformation of the contract and was successful in the action. The court stated:

As is the rule with contracts generally, the mere failure of an insured to read the policy does not necessarily prevent his seeking reformation thereon . . .²⁹

If the North Carolina courts are willing to embrace the reality that people who purchase group credit life, accident and health, or property

25. *Graham v. Mutual Life Insurance Co. of N.Y.*, 176 N.C. 313, 97 S.E. 6 (1918); *McCallum v. Old Republic Life Insurance Co.*, 259 N.C. 573, 131 S.E.2d 435 (1963); *Setzer v. Old Republic Life Insurance Co.*, 257 N.C. 396, 126 S.E.2d 135 (1962); Baer, *Eleventh Annual Survey of North Carolina Case Law*, 42 N.C.L. Rev. 600, 666.

26. 259 N.C. 573, 131 S.E.2d 435 (1963).

27. 259 N.C. at 581, 131 S.E.2d 440.

28. 20 N.C. App. 215, 201 S.E.2d 216 (1973).

29. *Id.* at 222, 201 S.E.2d at 220.

insurance never see the master policy at the time of purchase and only receive a copy of the terms many weeks after the transaction, then it is possible that reformation of group credit insurance contracts for fraud or mutual mistake may become a viable remedy for the consumer despite his failure to read the policy and bring any variances between the oral representations and the written terms to the attention of the insurer. The consumer never deals with the insurer directly, but purchases the group credit insurance through an unlicensed individual who apparently has the authority to enter into the agreement and who appears to be the agent of the insurer.

AGENCY REQUIREMENTS

In order to maintain an action for reformation of a group credit insurance policy to reflect the representations the salesman has given to the consumer, the salesman must be an actual agent of the insurance company or be clothed with apparent authority to transact business for the insurance company. A creditor or salesman who performs services in placing the insured's group creditor insurance does not become the agent of the insurer.³⁰ North Carolina courts have ruled that there is apparent authority for the consumer to believe that the salesman or creditor is an agent of the insurer when printed forms of the insurer are used in the application process.³¹ In group credit insurance, the creditor or salesman uses his company's printed negotiable instrument forms which contain no reference to the insurer.

The lack of agency relationship between the insurer and the insured is due to the fact that the insurance contract is between the insurer and the creditor.³² A group creditor's insurance contract is sold by the insurance company to the creditor for the purpose of providing various forms of creditor insurance service to their debtors. The insurance company contracts directly with the credit institution and never knows the names of the debtors, or even if they pay their premiums.³³ The following case is directly on point.

In *South Branch Valley National Bank v. Williams*,³⁴ the bank made

30. *Palmer v. Newport Trust Co.*, 245 A.2d 438 (Me. 1968); *First National Bank of Malden v. Farmers New World Life Insurance Co.*, 455 S.W.2d 517 (Mo. 1970); *South Branch Valley National Bank v. Williams*, 151 W. Va. 775, 155 S.E.2d 845 (1967).

31. *Charleston & W.C. Ry. Co. v. Robert Lassiter & Co.*, 207 N.C. 408, 177 S.E. 9 (1934).

32. *Palmer v. Newport Trust Co.*, 245 A.2d 438; *First National Bank of Malden v. Farmers New World Life Insurance Co.*, 455 S.W.2d 517; *South Branch Valley National Bank v. Williams*, 151 W. Va. 775, 155 S.E.2d 845.

33. Cases cited note 31 *supra*.

34. *South Branch Valley National Bank v. Williams*, 151 W. Va. 775, 155 S.E.2d 845 (1967).

application for and obtained from Metropolitan Life Insurance Company a group creditors life insurance policy to insure the lives of their debtors who purchased the protection. The insured debtor, John Williams, was sixty-five years old when he entered into the insurance agreement with the bank. Without any knowledge of Mr. Williams' insurance contract, Metropolitan Life directed the bank not to write credit life insurance contracts for people over sixty-five. Despite the notice, Mr. Ours, an employee of the bank, continued to collect premiums and send them to Metropolitan Life.

John Williams died and Metropolitan Life refused to pay the bank the amount due on the note because Mr. Williams was over sixty-five years old. The insurance company argued that; 1) the bank was not an agent of its company; 2) that Mr. Ours, the bank representative, was an agent of the bank; 3) that the insurance contract was solely between the insurance company and the bank; and 4) that the bank was the policy holder and not the insured. The court ruled in favor of the insurance company and stated:³⁵

We are not concerned here with the usual type of life insurance policy. Ordinarily the person covered by a life insurance policy is the policyholder and the insured. He purchases the insurance from the company, thereby creating privity of contract between him and the insurer. At his death, his beneficiary is paid by the company. Such is not the case in this instance. The record reveals a contract of insurance between Metropolitan, the insurer, and South Branch Valley National Bank, the policyholder and the insured. There was no contract between Metropolitan and John T. Williams. It necessarily follows that Mr. Ours in no manner acted as an agent for the insurance company when he provided for coverage on the loan of John T. Williams. This was a credit group life insurance policy, designed for benefit of the bank. It served to stimulate its loan business by offering this coverage to its debtors and also offered the Bank protection against possible loss by reason of the death of a debtor.

The court also stated:³⁶

It has been contended that Mr. Ours by collecting the premiums and paying them to the insurer, became an agent of Metropolitan. The procedure, as revealed by the record, was that the amount of the premium was deducted by the Bank from each insured loan and at the end of each month the total sum of all premiums so collected was remitted to Metropolitan. The insurer had no knowledge of the names of the debtors or who did or did not pay premiums to the Bank. Its contract was with the Bank and not the debtors. This presented a mere matter of bookkeeping by Mr. Ours and was a service performed on behalf of the Bank.

35. *Id.* at 781, 155 S.E.2d at 851.

36. *Id.* at 782, 155 S.E.2d at 852.

The court's ruling indicates that it holds the insured to be an incidental third party beneficiary to the insurance contract between the insurance company and the creditor. The creditor's primary purpose, in contracting for the insurance, was to ensure the repayment of debts owed. Since the contract is not primarily for the benefit of the third party debtor, and the creditor's primary intent in contracting is not to discharge a duty owed to the debtor, the insured is not a creditor beneficiary.³⁷ If the creditor's primary purpose in contracting with the insurance company had been to confer a gift upon the insured, then the insured would have been a donee beneficiary. Only a donee or creditor beneficiary would have standing to sue the insurance company.³⁸ Since the insured is only incidentally benefited by performance of the credit insurance contract, he cannot maintain an action against the insurer.³⁹ The courts of North Carolina have held that there is no agency relationship between the purchaser of group credit insurance policy and the insurance company.⁴⁰

In *Roger v. Prudential Insurance Company of America*,⁴¹ plaintiff's husband was employed by a construction company which had contracted for a group life insurance policy for its employees. The construction company did not pay the premiums for two consecutive months, and the insurance policy was allowed to lapse. Despite this event, the construction company continued to collect the premiums from the employees' checks. Plaintiff's husband died and Prudential refused to pay the benefits. Plaintiff maintained that since her husband had continued to pay the premiums the policy was still in force as to her husband. The court ruled in favor of the insurance company because the deduction of the employee's wages by the employer was not payment to the insurer. The court quoted *Boseman v. Connecticut General Life Insurance Company*⁴² with approval:

When procuring the policy, obtaining application of employees, taking payment deduction orders, reporting changes in the insured group, paying premiums and generally in doing whatever may serve to obtain and keep the insurance in force, employers act not as agents of insurer, but for their employees or for themselves.⁴³

37. *Vogel v. Reed Supply Co.*, 277 N.C. 119, 177 S.E.2d 273 (1970); *Crosrol Carding Developments, Inc. v. Gunter & Cooke Inc.*, 12 N.C. App. 448, 183 S.E.2d 834 (1971); *Boone v. Boone*, 217 N.C. 722, 9 S.E.2d 383 (1940); *RESTATEMENT OF CONTRACTS* § 133 (1932).

38. Cases cited note 3 *supra*; *RESTATEMENT OF CONTRACTS* § 133 (1932).

39. Cases cited note 3 *supra*; *RESTATEMENT OF CONTRACTS* § 133 (1932).

40. *Newman v. Insurance Co.*, 255 N.C. 722, 122 S.E.2d 701 (1961); *Haneline v. Turner White Casket Co.*, 238 N.C. 127, 76 S.E.2d 372 (1953); *Dewease v. Turner White Insurance Co.*, 208 N.C. 732, 182 S.E. 447 (1935).

41. 259 N.C. 125, 130 S.E.2d 64 (1963).

42. 301 U.S. 196.

43. 259 N.C. at 127, 130 S.E.2d at 66.

Without an agency relationship on the part of the creditor or salesman with the insurer, an action to reform the insurance contract to meet the reasonable expectations of the insured as orally represented upon application cannot be maintained.

CONCLUSION

Due to the present state of the law, the insurance companies are completely insulated from any liability for misrepresentation caused by the creditors and salesmen who service the consumer from their group credit insurance policies. It is the responsibility of the North Carolina Legislature to require the licensing of credit life, accident and health, and property insurance agents so that they may be policed by the insurance commissioner. The licensing of credit insurance agents is the initial step in developing case law holdings of agency relationships between the insurance companies and creditor institutions which purchase group credit insurance policies. If the courts were to find such an agency relationship to exist without an act of the legislature requiring the licensing of credit insurance agents, they would be writing social policy without an adequate basis in law.

WILLIAM G. REED

North Carolina General Statute Section 7A-227¹ Denies Litigant a Meaningful Right to Trial by Jury

One of our most sacred rights is the right to be judged by our peers. Judicially, of course, this means the right to a trial by jury.

The right to a trial by jury is safeguarded by both the United States and North Carolina Constitutions. Article I Section 25 of the North Carolina Constitution provides: "In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." Actions for replevin and detinue have always been considered actions at law in North Carolina.

The "Catch 22" of this right in North Carolina is the Magistrate's

1. N.C. GEN. STAT. 7A-227 (1967) provides that an appeal from judgment of a magistrate does not stay execution. Execution may be stayed by order of the clerk of superior court upon petition by the appellant accompanied by undertaking in writing executed by one or more sufficient sureties approved by the clerk to the effect that if judgment be rendered against appellant the sureties will pay the amount thereof with costs awarded against the appellant.